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SENATE

REPORT
No. 93-948

LAW-ENFORCEMENT OFFICERS' AND FIREFIGHTERS' RETIREMENT

JUNE 19, 1974.—Ordered to be printed

Mr. McGEE, from the Committee on Post Office and Civil Service,
submitted the following

REPORT

[To accompany H.R. 9281]

The Committee on Post Office and Civil Service, to which was referred the bill H.R. 9281 to amend title 5, United States Code, with respect to the retirement of certain law enforcement and firefighter personnel, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PROVISIONS OF H.R. 9281

ELIGIBILITY

Existing law.—Under section 8396(c) of title 5, United States Code, Federal employees engaged in the investigation, apprehension, or detention of persons suspected or convicted of Federal crimes or the control and extinguishment of fires may voluntarily retire at age 50 with 20 years of service. Such retirement must have the employing agency's recommendation and must be approved by the Civil Service Commission which, in its decision, considers the degree of hazard to which the employee's duties expose him.

H.R. 9281.—This bill retains the 50-20 provision but removes the provision requiring agency and Civil Service Commission approval.

COMPUTATION FORMULA

Existing law.—5 U.S.C. 8339(d) provides for computing subject employees' annuities by multiplying total years of service by two percent of high-three average pay, with no reduction if the retirement becomes effective prior to age 55.

H.R. 9281.—This measure would increase the computation factor to $2\frac{1}{2}$ percent of average pay for the first 20 years, plus 2 percent of average pay multiplied by the number of years of service exceeding 20.

BASE PAY

Existing law.—In general, base pay for retirement purposes is the rate fixed by law or regulation (5 U.S.C. 8331 (3)). This is exclusive of premium or overtime pay. Excepted under 5 U.S.C. 5545 (c) (1) is premium pay for an employee required to remain regularly at his duty station during longer than ordinary periods of duty. Firefighters receive the benefit of this provision.

H.R. 9281.—This bill would include as a part of base pay for retirement purposes premium pay received by law-enforcement officers for "uncontrollable overtime". This is premium pay for duty hours which cannot be administratively controlled because the nature of the work requires unscheduled, irregular, overtime duty.

DEDUCTIONS

Existing law.—By law, law-enforcement officers and firefighters contribute the same amount, 7 percent, as other employees.

H.R. 9281.—This bill would increase the employee's deduction and the matching agency contribution to $7\frac{1}{2}$ percent of both regular and premium pay. This would partially defray the increased normal cost resulting from the liberalizing provisions of the bill.

ENTRY AND MANDATORY SEPARATION AGES

Existing law.—There is no provision of existing law to fix a maximum age limit for appointment to law-enforcement and firefighting positions. No provision of law requires compulsory retirement of employees in these positions until age 70.

H.R. 9281.—This bill requires mandatory retirement of otherwise eligible law-enforcement officers and firefighters at age 55 or on completion of 20 years of such service beyond age 55, whichever comes later. The bill also provides that the employing agency may exempt an employee from automatic separation at age 55 when such exemption is judged to be in the public interest.

H.R. 9281 also provides that the head of an agency may fix the minimum and maximum age limits within which an original appointment may be made to a position as a law-enforcement officer or firefighter.

STATEMENT

The history of retirement legislation dealing with law-enforcement officers and firefighters shows Congressional intent to liberalize retirement provisions so as to make it feasible for these employees to retire at age 50. This intent has been based on the nature of the work involved and the determination that these occupations should be composed, insofar as possible, of young men and women physically capable of meeting the vigorous demands of occupations which are far more taxing physically than most in the Federal Service. They are occupations calling for the strength and stamina of the young rather than the middle aged. Older employees in these occupations should be encouraged to retire.

Public Law 80-168, (July 11, 1947) applying only to the Federal Bureau of Investigation, provided for retirement at age 50 after 20 years of service, with the annuity computation equal to 2 percent of average salary.

The next year (July 2, 1948) Public Law 80-879 extended the same provision to officers and employees whose duties "are primarily the investigation, apprehension, or detention of persons suspected or convicted of offenses against the criminal laws of the United States".

Public Law 92-382 (1972) accorded the same liberalized retirement provisions to firefighters.

These liberalized provisions, while initially effective, have proven to be less so as the gap between law-enforcement officers' and firefighters' retirement provisions and those for Federal employees in general has slowly diminished. H.R. 9281 carries out historic Congressional intent by improving the preference initially given law-enforcement officers so as to restore the viability of the concept that it should be economically feasible for employees in these occupations to retire at age 50.

In 1948 when Public Law 80-879 extended the 2 percent computation figure to cover most law-enforcement officers, there was a 33 percent difference between the annuity computation formulas. The computation multiplier for employees in general was $1\frac{1}{2}$ percent of average salary for each year of service. This formula has since been liberalized to:

- (a) $1\frac{1}{2}$ percent of average pay multiplied by 5 years of service;
- (b) $1\frac{3}{4}$ percent of average pay multiplied by years of service between 5 and 10;
- (c) 2 percent of average pay multiplied by all years of service over 10 years.

While these improvements for the generality of employees have been made, the flat 2 percent multiplier for law-enforcement employees has remained the same. The differential has diminished from 33 percent to only 7 percent after 30 years of service.

At the same time, the retirement provisions for Federal law-enforcement officers lag farther and farther behind those provided for the law-enforcement officers of State, county, and municipalities.

The retirement provisions of law for law-enforcement officials and firefighters in the District of Columbia whose conditions of employment are similar to those covered by H.R. 9281 are extremely favorable. In 1970 the President signed Public Law 91-509 governing the retirement of the Metropolitan Police Department, the Executive Protective Service, the Fire Department of the District of Columbia, the U.S. Park Police Force, and certain contingents of the U.S. Secret Service.

The Act allows retirement on an immediate annuity after 20 years of service regardless of age, with salary multiplier based not on the high three-year average but on the salary at time of retirement. The annuity is computed on the basis of $2\frac{1}{2}$ percent multiplied by the first 20 years and 3 percent for all years over 20.

The Act also provides for \$50,000 lump-sum payment to the survivor of an individual covered who is killed in the line of duty.

The Committee has concluded it is becoming less and less economically feasible for a Federal law-enforcement official or firefighter to retire in his early fifties at the present rate of computation. H.R. 9281 raises the multiplier to $2\frac{1}{2}$ percent for the first 20 years, plus 2 percent

for the years exceeding 20, thus encouraging retirement after 20 years of service and making it less worthwhile to continue working after that time. Additionally, the bill provides for the mandatory retirement of an eligible employee at age 55 or after 20 years, whichever occurs later.

Other provisions of the bill, the inclusion of premium pay for uncontrollable overtime and the fixing of a maximum age limit for appointment, will both serve to make early retirement an attractive option.

H.R. 9281, as passed by the House of Representatives, provides for the mandatory retirement of law-enforcement officers at age 55 as explained above. The Committee intends that the head of the agency, Department, or Bureau in which the subject personnel are employed should be excluded from this requirement.

AMENDMENTS

The inclusion of premium pay for uncontrollable overtime as a part of basic pay, in the House-passed bill, would become effective at the beginning of the first applicable pay period beginning after December 31, 1973. The Committee has changed this date to December 31, 1974. Similarly, the 7½ percent retirement deduction rate, to become effective in the House-passed bill the first pay period which begins after December 31, 1973, has been changed in the bill as reported by the Committee to December 31, 1974.

The provision requiring the automatic separation of a law-enforcement officer or a firefighter at age 55 or upon completion of 20 years of service, whichever occurs later, would take effect January 1, 1977, in the bill as passed by the House. The Committee has amended the bill to advance this date to January 1, 1978. This provision affords present employees a three-year opportunity during which premium pay will be included in base pay, thus enhancing their annuities.

The Committee has also made a series of amendments, having no effect on the bill's substance, to conform to the style of title 5.

EMPLOYEES COVERED

The numbers of law-enforcement employees who would benefit from this legislation and the agencies by which they are employed follow:

FBI	3,600
Bureau of Prisons	5,000
Immigration/Naturalization	2,400
Marshalls	800
Bureau of Narcotics and Dangerous Drugs	800
Naval Intelligence	5,000
Postal Inspectors	1,800
IRS	4,500
Customs	2,600
Secret Service	1,200
Subtotal, law enforcement	32,700
Firefighters	9,000
Total number employees	41,700

COST

The Civil Service Commission estimates that enactment of H.R. 9281 will create an additional \$664 million in the unfunded liability of the Civil Service Retirement and Disability Fund. Under existing law, this amount would be amortized over 30 annual appropriations of \$41.1 million.

AGENCY VIEWS

Following are the views of the Civil Service Commission and the Comptroller General of the United States on H.R. 9281:

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., October 3, 1973.

HON. GALE W. MCGEE,
Chairman, Committee on Post Office and Civil Service, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the Commission's views on H.R. 9281, a bill "To amend title 5, United States Code, with respect to the retirement of certain law enforcement and firefighter personnel, and for other purposes." H.R. 9281 passed the House on September 21, 1973.

Essentially, H.R. 9281 would—

Permit the head of an agency (with the concurrence of an agent designated by the President) to determine and fix the minimum and maximum limits of age on original appointments to positions dealing with law enforcement and firefighting;

Include premium pay as part of basic pay in the computation of annuities for law enforcement officers;

Increase employee and agency contributions to the Civil Service Retirement and Disability Fund by $\frac{1}{2}\%$ (from 7% to $7\frac{1}{2}\%$) for law enforcement officers and firefighters;

Separate effective January 1, 1977, an employee "eligible for immediate retirement" under 5 U.S.C. 8336(c) from service upon attaining age 55 unless his agency head exempts him; and

Increase the formula for personnel covered by 5 U.S.C. 8336(c) to:

(1) $2\frac{1}{2}\%$ of the "high-3" average salary multiplied by 20 years' service, and

(2) 2% of the "high-3" average salary multiplied by all years of creditable Federal service over 20.

Our comments regarding these proposals follow.

Section 1 of the bill provides that the head of an agency may (with the concurrence of an agent designated by the President) determine and fix the minimum and maximum limits of age within which original appointments may be made to positions covered by 5 U.S.C. 8336(c).

Section 8336(c) applies to employees whose duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States or employees whose duties are primarily to perform work directly con-

connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus. Such an employee who is separated from the service after reaching 50 years of age and completing 20 years of service in the performance of these duties is entitled to an annuity under the preferential provisions of this section provided his agency head recommends and the Civil Service Commission approves his retirement.

With two exceptions, the current law (5 U.S.C. 3307) prohibits the use of appropriated funds to pay the salary of any employee who establishes a maximum age requirement for entry into the competitive service. One exception permits the Secretary of Transportation (with the concurrence of the President's agent) to establish a maximum age limit for original appointment to air traffic controller positions. The other exception permits the Secretary of the Interior to set minimum and maximum age limits for original appointments to United States Park Police positions.

The Commission concurs in the proposal to authorize a maximum age limit for entering into the occupations covered by the bill. Under section 4 of this bill, employees in these occupations would generally be subject to mandatory retirement at age 55. It is important under these circumstances to have a limit on the age of entry that is related to that retirement age so persons entering the occupations can be provided a full career.

However, the Commission considers that this piecemeal approach to the matter of setting appropriate maximum entry age requirements is not the best one to take. We understand that it is patterned after the authorization granted the Secretary of Transportation in the case of air traffic controllers. But whereas the air traffic controllers involved in the earlier authorization are all in one agency, we are concerned here with occupations that are found in many agencies throughout Government. In our view, if maximum entry ages are to be established, it would be desirable to have uniform age limits for these positions, wherever they are located. Further, it is our view that the best way to achieve this uniformity would be to have the President, or such single agent as he may designate, establish the appropriate maximum age limit for entry into the covered occupations.

The Commission does not consider it appropriate to include minimum-age-setting authority as proposed in section 1 of the bill. For positions in the competitive service, the Commission already has authority to establish appropriate minimum age limits. Agencies themselves have the same authority with respect to positions in the excepted service. Since no new authorization is needed to achieve the purposes of section 1 in this respect, it is recommended that reference to minimum age limits be omitted.

Section 2 of H.R. 9281 provides that premium compensation payable under section 5545(c)(2) of title 5, United States Code, shall be treated as basic pay with respect to law enforcement officers for purposes of civil service retirement.

Although the premium payments for positions covered by the provisions of section 5445(c)(2) are established on the basis of annual rates, the amounts of such pay are adjusted periodically during the year on the basis of the frequency and duration of the irregular unscheduled overtime duty required in the position. For example, the

Immigration and Naturalization Service adjusts the amount of the premium pay for individual positions (at 10%, 15%, 20%, or 25% of basic pay) every six pay periods on the basis of the number of hours actually worked by the occupant during previous periods. The U.S. Marshals Service and the Bureau of Customs make similar adjustments on a quarterly basis.

The application of Section 5545 (c) (2) is not limited to law enforcement officers. It would be inequitable to include in basic pay, for purposes of civil service retirement, premium pay under this section for law enforcement officers only. Further, agencies employing law enforcement officers do not pay all of such officers under this provision. Some Customs officers, for example, receive overtime pay on this basis and others do not. In our view, the circumstances in which the employee himself determines the need for overtime work, and those in which the need for overtime is determined by the supervisor, do not differ sufficiently—whether or not they are employed in law enforcement—to warrant different treatment for retirement purposes.

Section 2(b) of the bill (which defines law enforcement officers and firefighters) would remove the provision in the present law requiring the recommendation of the head of the employing agency and Commission approval before an employee could receive the more liberal retirement benefits provided by 5 U.S.C. 8336(c). The Commission believes that the provisions for both agency and Commission discretion should be retained in the law. Otherwise an employee fired for misconduct will be entitled to the preferential treatment of early retirement and a bonus annuity. This discretion assures that early retirements are for the good of the service.

Section 4 of the bill provides that a law enforcement officer or a firefighter "eligible for immediate retirement" under 5 U.S.C. 8336(c) shall be separated upon attaining age 55, unless his agency head exempts him. The agency head can make such an exemption up to age 60. The Commission believes early mandatory retirement is consistent with the overall intent of section 8336(c), and would have no objection to such a provision being enacted. In this respect, however, we believe the mandatory retirement provisions should be identical with the ages specified in P.L. 92-297 for Air Traffic Controllers—that is ages 56 and 61 respectively.

Section 6 of the bill would increase the annuity computation formula for law enforcement personnel covered by 5 U.S.C. 8336(c) to:

- (1) $2\frac{1}{2}\%$ of the "high-3" average salary multiplied by 20 years' service in law enforcement work.
- (2) 2% of the "high-3" average salary multiplied by all years of creditable Federal service over 20.

Under present law their annuities are computed under a formula that is more liberal than the one used for employees generally: 2% of the "high-3" year average salary multiplied by all years of creditable Federal service. In comparison, the annuities of employees generally are computed under the basic annuity formula as follows:

- (a) $1\frac{1}{2}\%$ of the "high-3" average pay multiplied by 5 years of service;
- (b) $1\frac{3}{4}\%$ of the "high-3" average pay multiplied by years of service between 5 and 10;

(c) 2% of the "high-2" average pay multiplied by all years of service over 10 years.

The present preferential computation for law enforcers and firefighters was proposed and justified as a means for keeping the service young by encouraging the retirement of persons who, because of the vigorous demands of their positions, are prematurely less able to perform required duties. The special annuity formula is intended to provide a man who elects to retire at age 50 with only 20 years of service an annuity which makes retirement economically feasible. However, many law-enforcement employees stay on to a later age, some even being automatically separated at age 70, and then secure agency recommendation to support application of the liberal formula. There is no basis for providing a preferential formula to a man who has served a full career of 30 to 35 years, and whose annuity under the regular formula would be fully adequate, but this situation can and does arise under the current law enforcer-firefighter formula.

The ineffectiveness of the present early law-enforcement retirement provision (in accomplishing its intended purpose of assuring a young, vigorous Federal law-enforcement organization) is readily apparent by comparing retirement statistics for law enforcers with those of employees generally. During the fiscal year 1972, employees retiring under the regular 30-year provision had an average age of 57.1, an average of 32.8 years of service, and were awarded annuities averaging \$642 a month. On the other hand, retiring law-enforcement personnel had an average of 56.9, an average of 30.4 years of service, and were awarded annuities averaging \$826 a month. In other words, employees in law enforcement activities retiring under the special provisions for law enforcers received annuities averaging \$184 a month (28 percent) more than employees retiring under the generally applicable 30-year provision, but were on the average only 0.2 of a year younger, and had an average of 2.4 years less service.

The Commission believes the computation formula proposed by H.R. 9281 is excessively generous and should not be enacted. Use of the regular formula ($1\frac{1}{2}\%$, $1\frac{3}{4}\%$, 2%), with a guaranteed basic annuity of not less than 50% of high three average pay, as now applies to air traffic controllers, would be a more appropriate incentive for early retirement of law-enforcers and firefighters, would assure an economically feasible retirement income, and would discourage covered employees from delaying retirement long enough to raise the annuity above the 50% level.

If H.R. 9281 were enacted, we estimate that the normal cost of the Civil Service Retirement System for all employees would be increased by .10 percent and the unfunded liability of the Civil Service Retirement and Disability Fund by \$664 million. Under the financing provisions of section 8348(f) of title 5, United States Code, this amount would be amortized in 30 equal annual installments of approximately \$41.1 million.

To help pay these additional costs, section 3 of the bill would increase the contribution rate of law enforcement officers and firefighters from the present 7% to a new $7\frac{1}{2}\%$ with a corresponding increase in the agency contribution rate. The Commission objects to this provision, believing that preferential benefit provisions for any class of employ-

ees can be justified only when they serve a management purpose. We could agree to changes in the law which would increase costs—early retirement and a guaranteed annuity of 50% of average pay after 20 years of service—but these are not special rewards or liberalizations intended primarily to benefit the class of employees affected. They are part of a plan to benefit management by keeping law enforcement and fire fighting services young and vigorous. The higher annuity rate provided for early retirement is for the sole purpose of making it economically feasible for employees to retire in their early fifties.

We would object to any proposal to establish a preferential computation formula as a reward for a particular kind of service, because we believe no one type of service merits a greater retirement reward than any other. The value of service of any kind is reflected in pay, which in turn cannot be rationalized by asking the employee to pay a higher contribution rate. Almost any identifiable class of Federal employees would gladly pay more for a clearly more liberal computation method. Thus, one of the purposes intended by H.R. 9281 is to achieve the management objective of a young and vigorous service, through a system of early retirements, and employees should not in our opinion be asked to help pay for a management tool.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of H.R. 9281 would not be in accord with the program of the President. However, the Administration agrees with the Committee's objective of encouraging a young and vigorous work force for these occupations. Accordingly, we could support a bill embodying only those features of H.R. 9281 which we have indicated above that we would support, and those we could support if modified as suggested.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON,
Chairman.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., April 26, 1974.

B-135003.

Hon. GALE W. McGEE,
Chairman, Committee on Post Office and Civil Service, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: In your letter received here on April 5, 1974, you requested our views and comments on S. 3263, 93d Congress, a bill, "To amend title 5, United States Code, with respect to the retirement of certain law enforcement and firefighting personnel, and for other purposes." It was informally agreed that we would consider the similar House bill, H.R. 9281, 93d Congress, in preparing our comments on S. 3263.

The legislation is designed to provide improved retirement benefits for Federal law enforcement and firefighting personnel. In summary S. 3263 contains the following provisions which are different from the currently applicable provisions of law:

1. Minimum and maximum age limits could be established administratively for original appointments to the subject positions.

2. Effective January 1, 1970, premium pay would be included as part of basic pay in computing annuities for the subject personnel.

3. Agency and subject personnel contributions to the civil service retirement and disability fund would be increased to 7½ percent effective the first pay period beginning after December 31, 1974.

4. Effective January 1, 1977, a subject employee eligible for immediate retirement would be separated upon attaining age 55 unless he is exempted by his agency head.

5. Effective upon enactment of the legislation an employee who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer or firefighter or any combination of such service totaling 20 years would be entitled to an annuity.

6. The annuity computation formula for the subject personnel would be increased to 2½ percent of the high-3 average salary multiplied by the years of service effective on the date of enactment.

The House of Representatives passed H.R. 9281 on September 20, 1973. That bill differs somewhat from S. 3263 in that the House approved legislation would limit the increase of the 2½ percent factor in item 6, above, to the first 20 years. Thereafter the percent multiplier would be reduced to 2 percent. Additionally the provision regarding premium pay in item 2, above, would not be effective until the first applicable pay period which begins after December 31, 1973. The provision in item 3, above, for increased agency-employee contributions to retirement fund would be effective at the first applicable pay period after December 31, 1973, under H.R. 9281. Under S. 3263 that change would be effective the same pay period one year later.

The Civil Service Commission in its report to the House of Representatives on H.R. 9281 estimated that as a result of its enactment the normal cost of the civil service retirement system for all employees would be increased by 0.10 percent and the unfunded liability in the civil service retirement and disability fund would be increased by \$664 million. See H. Rept. 93-463, September 11, 1973, pp. 11 and 12. We understand that if S. 3263 were enacted the increase in such normal cost would be 0.11 percent and the increase in unfunded liability would be \$778 million. Also we are advised that not included in the cost estimates resulting from the increased annuities proposed by H.R. 9281 and S. 3263 are increased unfunded liability and associated annual interest payments for future cost-of-living increases in annuities. With the size and frequency of cost-of-living annuities increases anticipated, these costs will be significant. In view of the potential cost of the proposed increases in annuity benefits, we believe the matter deserves the closest scrutiny by the Congress.

Enclosed for your consideration are two technical changes in the language of S. 3263 which we believe should be considered by the Committee.

Sincerely yours,

R. F. KELLER,
*Deputy Comptroller General
of the United States.*

Enclosure.

CHANGES IN EXISTING LAW

In compliance with subsection 4 or rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in black brackets; new matter is shown in italic):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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SUBPART B—EMPLOYMENT AND RETENTION

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CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

* * * * *

§ 3307. Competitive service; maximum-age entrance requirements; exceptions

(a) Except as provided in subsections [(b) and (c)] (b), (c), and (d) of this section, appropriated funds may not be used to pay an employee who establishes a maximum-age requirement for entrance into the competitive service.

* * * * *

(d) *The head of any agency may, with the concurrence of such agent as the President may designate, determine and fix the minimum and maximum limits of age within which an original appointment may be made to a position as a law enforcement officer or firefighter, as defined by sections 8331 (20) and (21), respectively, of this title.*

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SUBPART G—INSURANCE AND ANNUITIES

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CHAPTER 83—RETIREMENT

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SUBCHAPTER III—CIVIL SERVICE RETIREMENT

§ 8331. DEFINITIONS

For the purpose of this subchapter—

(1) ***

* * * * *

(3) "basic pay" includes—

(A) the amount a Member received from April 1, 1954, to February 28, 1955, as expense allowance under section

601 (b) of the Legislative Reorganization Act of 1946 (60 Stat. 850), as amended; and that amount from January 3, 1953, to March 31, 1954, if deposit is made therefore as provided by section 8334 of this title;

(B) additional pay provided by—

(i) subsection (a) of section 60e-7 of title 2 and the provisions of law referred to by that subsection; and

(ii) sections 60e-8, 60e-9, 60e-10, 60e-11, 60e-12, 60e-13, and 60e-14 of title 2; [and]

(C) premium pay under section 5545(c)(1) of this title; and

(D) with respect to a law enforcement officer, premium pay under section 5545(c)(2) of this title;

but does not include bonuses, allowances, overtime pay, military pay, pay given in addition to the base pay of the position as fixed by law or regulation except as provided by subparagraphs [(B) and (C)] (B), (C), and (D) of this paragraph, retroactive pay under section 5344 of this title in the case of a retired or deceased employee, uniform allowances under section 5901 of this title, or lump-sum leave payments under subchapter VI of chapter 55 of this title. For an employee paid on a fee basis, the maximum amount of basic pay which may be used is \$10,000;

* * * * *

(20) "law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this paragraph, "detention" includes the duties of—

(A) employees of the Bureau of Prisons and Federal Prison Industries, Incorporated;

(B) employees of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated;

(C) employees in the field service at Army or Navy disciplinary barracks or at confinement and rehabilitation facilities operated by any of the armed forces; and

(D) employees of the Department of Corrections of the District of Columbia, its industries and utilities;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniformed Code of Military Justice (chapter 47 of title 10) require frequent (as determined by the appropriate administrative authority with the concurrence of the Commission) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation.

(21) "firefighter" means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use

of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

§ 8334. Deductions, contributions, and deposits

(a) (1) The employing agency shall deduct and withhold 7 percent of the basic pay of an employee, 7½ percent of the basic pay of a Congressional employee, a law enforcement officer, and a firefighter, and 8 percent of the basic pay of a Member. An equal amount shall be contributed from the appropriation or fund used to pay the employee or, in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment. When an employee in the legislative branch is paid by the Clerk of the House of Representatives, the Clerk may pay from the contingent fund of the House the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee.

(c) Each employee or Member credited with civilian service after July 31, 1920, for which retirement deductions or deposits have not been made, may deposit with interest an amount equal to the following percentages of his basic pay received for that service:

Percentage of
basic pay:

Employee:

Service period

2½-----	August 1, 1920, to June 30, 1926.
3½-----	July 1, 1926, to June 30, 1942.
5-----	July 1, 1942, to June 30, 1948.
6-----	July 1, 1948, to October 31, 1956.
6½-----	November 1, 1956, to December 31, 1969.
7-----	After December 31, 1969.

Member or employee
for Congressional
employee service:

2½-----	August 1, 1920, to June 30, 1926.
3½-----	July 1, 1926, to June 30, 1942.
5-----	July 1, 1942, to June 30, 1948.
6-----	July 1, 1948, to October 31, 1956.
6½-----	November 1, 1956, to December 31, 1969.
7½-----	After December 31, 1969.

Member for Member
service:

2½-----	August 1, 1920, to June 30, 1926.
3½-----	July 1, 1926, to June 30, 1942.
5-----	July 1, 1942, to August 1, 1946.
6-----	August 2, 1946, to October 31, 1956.
7½-----	November 1, 1956, to December 31, 1969.
8-----	After December 31, 1969.

Percentage of basic pay	Employee:	Service period
	Law enforcement officer for law enforcement service and firefighter for firefighter service:	
2½	-----	August 1, 1920, to June 30, 1926.
3½	-----	July 1, 1926, to June 30, 1942.
5	-----	July 1, 1942, to June 30, 1948.
6	-----	July 1, 1948, to October 31, 1956.
6½	-----	November 1, 1956, to December 31, 1969.
7	-----	January 1, 1970, to December 31, 1974.
7½	-----	After December 31, 1974.
*	*	*

§ 8335. MANDATORY SEPARATION

(a) * * *

(g) A law enforcement officer or a firefighter who is otherwise eligible for immediate retirement under section 8336(c) of this title shall be separated from the service on the last day of the month in which he becomes fifty-five years of age or completes twenty years of service if then over that age. The head of the agency, when in his judgment the public interest so requires, may exempt such an employee from automatic separation under this subsection until that employee becomes sixty years of age. The employing office shall notify the employee in writing of the date of separation at least sixty days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the sixty-day notice expires.

§ 8336. IMMEDIATE RETIREMENT

(a) An employee who is separated from the service after becoming 55 years of age and completing 30 years of service is entitled to an annuity.

(b) An employee who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.

(c) An employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States or are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position, who is separated from the service after becoming 50 years of age and completing 20 years of service in the performance of these duties is entitled to an annuity if the head of his agency recommends his retirement and the Civil Service Commission approves that recommendation. The head of the agency and the Commission shall consider fully the degree of hazard to which the employee is subjected in the performance of his duties, instead of the general duties of the class of

the position held by the employee. For the purpose of this subsection, "detention" includes the duties of—

[(1) employees of the Bureau of Prisons and Federal Prison Industries, Incorporated;

[(2) employees of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated;

[(3) employees in the field service at Army or Navy disciplinary barracks or at confinement and rehabilitation facilities operated by any of the armed forces; and

[(4) employees of the Department of Corrections of the District of Columbia, its industries and utilities;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniform Code of Military Justice (chapter 47 of title 10) require frequent (as determined by the appropriate administrative authority with the concurrence of the Commission) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation or rehabilitation.]

(c) *An employee who is separated from the service after becoming fifty years of age and completing twenty years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least twenty years, is entitled to an annuity.*

* * * * *

§ 8339. COMPUTATION OF ANNUITY

(a) * * *

* * * * *

(d) *The annuity of an employee retiring under section 8335 (g) or this title is 2 percent of his average pay multiplied by his total service.]*

(d) *The annuity of an employee retiring under section 8335 (g) or 8336 (c) of this title is—*

(A) *2½ per centum of his average pay multiplied by so much of his total service as does not exceed twenty years; plus*

(B) *2 per centum of his average pay multiplied by so much of his total service as exceeds twenty years.*

* * * * *

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93d CONGRESS	}	HOUSE OF REPRESENTATIVES	}	REPORT
1st Session				No. 93-463

RETIREMENT BENEFITS FOR CERTAIN LAW ENFORCE-
MENT AND FIREFIGHTING PERSONNEL

SEPTEMBER 11, 1973.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. WALDIE, from the Committee on Post Office and Civil
Service, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 9281]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 9281) to amend title 5, United States Code, with respect to the retirement of certain law enforcement and firefighter personnel, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The primary purpose of this legislation is to provide improved retirement benefits for Federal law enforcement and firefighting personnel.

COMMITTEE ACTION

H.R. 9281 was approved by a unanimous voice vote of the Subcommittee on Retirement and Employee Benefits and ordered reported by a voice vote of the full Committee. Hearings on a related bill, H.R. 2654, were conducted on May 29 and 30, 1973 (Committee No. 93-15).

SUMMARY OF H.R. 9281

Eligibility.—Under the existing provision of the civil service retirement law (section 8336(c) of title 5, United States Code), employees who primarily are engaged in (1) the investigation, apprehension, or detention of persons suspected or convicted of Federal crimes, or

(2) the control and extinguishment of fires, may voluntarily retire after attaining age 50 and completing 20 years of service in the performance of such duties. Retirement is contingent upon the employing agency's recommendation and the Civil Service Commission's approval after considering fully the degree of hazard to which the employee is subjected in the performance of such duties.

The bill retains the existing minimum age and service requirements for retirement, but deletes from the law the requirement that the head of the employing agency and the Commission consider the degree of hazard to which the employee has been exposed before approving the retirement.

Computation Formula.—Present law (section 8339(d) of title 5, United States Code) provides for computing such employees' annuities at the rate of 2 percent of average pay multiplied by the total years of service, with no reduction applied upon retirement prior to becoming age 55.

The bill would increase such computation formula to 2½ percent of average pay multiplied by 20 years of service, plus 2 percent of average pay multiplied by the years of service exceeding 20.

Base Pay.—Existing law (5 U.S.C. 8331(3)), provides, generally, that base pay for retirement purposes is the rate of pay of the position as fixed by law or regulation, exclusive of additional pay such as premium or overtime pay. One notable exception is that of the premium pay under 5 U.S.C. 5545(c)(1) for an employee who is required to remain regularly at or within the confines of his station during longer than ordinary periods of duty, substantially in a standby status, such as a firefighter.

The bill proposes to include as a part of base pay for retirement deduction an average pay purposes, the premium pay under 5 U.S.C. 5545(c)(2) received by law enforcement officers for "uncontrollable overtime", that is, premium pay for the hours of duty which cannot be controlled administratively because the nature of the position requires the employee to perform substantial amounts of irregular, unscheduled, overtime duty.

Deductions.—While the civil service retirement law accords law enforcement and firefighter personnel more generous treatment than other employees, generally, their rates of retirement contributions have been the same.

To partially support the increased normal cost of the new preferential provisions discussed above, the bill prescribes, a 7½ percent retirement deduction (and matching agency contribution) from both the regular and premium pay of these employees.

Entry and Mandatory Separation Ages.—Present law does not provide for fixing a maximum age limit for appointment to law enforcement or firefighting positions, nor does it require the compulsory retirement of persons occupying such positions until the attainment of age 70.

To better achieve the basic objective for according preferential retirement treatment to these classes of employees—that is, the maintenance of relatively young, vigorous, and effective law enforcement and firefighting workforces—the bill would require the mandatory retirement of an otherwise eligible employee upon his attainment of age 55, or upon completion of 20 years of law enforcement and/or firefight-

ing service if beyond that age, whichever occurs later. Provision is made for the employing agency to exempt an employee from automatic separation at age 55 when it is deemed to be in the public interest. However, such exemption may not extend beyond the employee's 60th birthday.

In order to implement the feasibility of compulsory retirement at age 55, the bill also would authorize the administrative fixing of minimum and maximum limits of age within which original appointments to such positions may be made.

STATEMENT

The objective of the Congress, in 1947 (Public Law 80-168, approved July 11, 1947), in providing preferential retirement rights and benefits for certain persons engaged in criminal law enforcement activity was to improve the quality, efficiency, and productivity of that activity by making law enforcement a "young man's service." The preferential provisions would, it was believed, serve to reduce the turnover among younger men and at the same time accelerate the retirement of older men. The more liberal annuity computation formula was not provided as a reward for that particular kind of employment, but because a more liberal formula was necessary to make earlier retirement, with resultant shorter service, economically feasible.

As to the matter of physical hazards or arduous work, the original legislation which applied exclusively to agents of the Federal Bureau of Investigation, had in mind individuals whose duties were primarily the investigation of crime. While the hazard was recognized, the legislation was not provided primarily because of the hazard but, rather, primarily because of the kinds of duties and the desirability of having relatively young and vigorous persons carrying out those particular duties.

When this special coverage was extended in 1948 (Public Law 80-879 approved July 2, 1948), the Federal Bureau of Investigation was no longer specifically named but, rather, the law adopted a general criteria that early retirement would apply to anyone whose duties for at least 20 years were primarily the investigation, apprehension, or detention of persons suspected or convicted of violations against the criminal laws of the United States. The element of hazard was a part of the requirements for eligibility to retire only insofar as the hazard applied particularly to the individual employee, rather than generally to the position. But hazard does not enter into determining who is eligible. It first must be determined that the employee is within the category of those who have a primary duty of investigation, apprehension, or detention.

In 1972 (Public Law 92-382, approved August 14, 1972), the same preferential retirement treatment was extended to Federal firefighting personnel upon the same premise—the maintenance of a staff of active, vigorous, physically capable men.

In actual operation, the early retirement privilege is only partially effective in accomplishing its originally intended purpose. It is indicated that most of those who retire in their early fifties are the more alert and aggressive employees who have found desirable jobs outside of Government.

On the other hand, many stay on until a much later age—some until reaching the mandatory retirement age of 70—and then obtain agency recommendation to support entitlement to the more liberal computation formula. Further, since the option to retire early is accorded only to the employee, the objective of early retirement may be effectively negated by the absence of a management option to retire those who have become less vigorous and less capable of performing law enforcement or firefighting duties.

There has been a concerted effort in recent Congresses to raise the present 2 percent computation factor to 2½ percent or more, and to apply it to the total years of service—even to non-law enforcement, non-firefighting, and military service—in order to increase the present benefit levels by 25 percent or more. Numerous bills have been introduced to extend existing and proposed preferential retirement privileges to additional employee groups subjected to hazards not present in the more sedentary occupations.

The Committee believes that H.R. 9281 will more effectively attain the basic objectives for which special retirement treatment was initially designed, as opposed to alternative proposals which might otherwise serve as a disincentive to that end. The Committee subscribes to the original policy that early retirement eligibility is provided as a means to assure a highly effective workforce to carry out Federal law enforcement and firefighting operations, that young men would be encouraged to enter and remain in such careers, and that replacements within the service would be facilitated at younger ages without undue hardship. The Committee does accede to the concept that the more generous privileges are provided as a reward to an employee for his having performed hazardous duties.

It is the consensus of the Committee that fixing age limits for entry into these particular classes of positions and prescribing mandatory retirement at age 55 will serve to assure a relatively "young man's service," and that providing an improved computation formula will make it more economically practicable for these employees to retire at or before the attainment of age 55.

EFFECTIVE DATES

The authority to determine and fix age limits within which original appointments may be made to law enforcement and firefighting positions will take effect on the date of enactment of this legislation.

The amendments to the computation formula will apply to Federal law enforcement and firefighting personnel who retire on or after the date of enactment.

The inclusion of premium pay for uncontrollable overtime as a part of basic pay will take effect at the beginning of the first applicable pay period which begins after December 31, 1973. The 7½ percent retirement deduction rate, on both regular and premium pay, also will become effective the first pay period which begins after December 31, 1973.

The provision requiring the automatic separation of a law enforcement officer or firefighter at age 55 or upon completion of 20 years of such service, whichever is later, will not take effect until January 1, 1977, thereby according present employees a 3 year opportunity to have

premium pay included in the basic pay upon which their retirement annuities are computed.

SECTION ANALYSIS

FIRST SECTION

The first section of the bill amends section 3307 of title 5, United States Code, relating to maximum age requirements for entrance into the competitive service, by adding a new subsection (d) at the end thereof. The new subsection (d) provides that the head of any agency may determine and fix the minimum and maximum limits of age within which an original appointment may be made to a position as a law enforcement officer or firefighter. The terms "law enforcement officer" and "firefighter" are defined in sections 8331(20) and (21), respectively, of title 5, as amended by section 2(b) of this bill. Under this subsection, the head of an agency may establish minimum and maximum age limits for law enforcement and firefighting positions only with the concurrence of such agent as the President may designate.

SECTION 2

Subsection (a) of section 2 amends section 8331(3) of title 5, which defines the term "basic pay" for purposes of the civil service retirement provisions contained in subchapter III of chapter 83 of title 5. The term "basic pay" is amended to include premium pay under section 5545(c)(2) of title 5, but only when paid to a law enforcement officer. Section 5545(c)(2) of title 5 authorizes the payment of premium pay to an employee who occupies a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular, unscheduled, overtime duty.

Under existing law, "basic pay" for employees other than Members of Congress and employees of the legislative branch, consists only of the base pay of the position as fixed by law or regulation and premium pay for standby duty granted under section 5545(c)(1) of title 5. Under this amendment, "basic pay," in the case of a law enforcement officer, would include premium pay authorized under 5 U.S.C. 5545(c)(2).

Subsection (b) of section 2 amends section 8331 of title 5 by adding two new definitions at the end thereof. The new paragraph (2) defines the term "law enforcement officer" and the new paragraph (21) defines the term "firefighter".

The term "law enforcement officer" is defined as meaning an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in such activity who is transferred to a supervisory or administrative position. The term "detention" is further defined under paragraph (20).

The term "firefighter" is defined as meaning an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee

engaged in such activity who is transferred to a supervisory or administrative position.

It should be noted that the current provisions of section 8333(c) of title 5 explicitly define the classes of employees who are eligible for the preferential retirement benefits authorized thereunder. The definitions of the terms "law enforcement officer" and "firefighter", contained in the new paragraphs (20) and (21) of section 8331, are identical to the definitions presently contained in section 8336(c) of title 5. Thus, any employee who currently is eligible for retirement under the existing provisions of section 8336(c) of title 5, will be covered by the term "law enforcement officer" or "firefighter", as those terms are defined under the new paragraphs (20) and (21), respectively.

SECTION 3

Subsection (a) of section 3 amends the first sentence of section 8334(a) (1) of title 5, relating to retirement deductions and contributions, to provide that employing agencies shall withhold $7\frac{1}{2}$ percent of the basic pay of a law enforcement officer or a firefighter for retirement purposes. Under existing law, 7 percent is withheld from the basic pay of these employees. As discussed above under the explanation of section 2 of the bill, basic pay includes premium pay for standby duty under 5 U.S.C. 5545(c) (1) in the case of firefighters and premium pay for uncontrollable overtime under 5 U.S.C. 5545(c) (2) in the case of law enforcement officers.

Subsection (b) of section 3 is a technical amendment to section 8334(c) of title 5, which is necessitated by the amendment made by subsection (a) of section 3.

SECTION 4

Section 4 of the bill amends section 8335 of title 5, relating to mandatory separation, by adding a new subsection (g) at the end thereof. The new subsection (g) provides that a law enforcement officer or a firefighter who otherwise is eligible for immediate retirement under section 8336(c) of title 5 (as amended by section 5 of this bill) shall be separated from the service on the last day of the month in which he becomes age 55, or on the last day of the month in which he completes 20 years of service if he has not completed 20 years of service by the time he reaches age 55.

It is important to note that no law enforcement officer or firefighter will be separated under this provision unless he is eligible for an immediate annuity under the amended provisions of section 8336(c) of title 5. For example, if a firefighter reaches age 55 but has completed only 15 years of service, he will be allowed to work an additional 5 years before becoming subject to the mandatory separation provisions of the new section 8335 (g), since he must have completed 20 years of service in order to be eligible for an immediate annuity under section 8336(c).

Under the new subsection (g), the head of an agency may exempt a law enforcement officer or firefighter from compulsory separation until such employee reaches age 60, when the head of the agency determines that such exemption is required in the public interest. The

agency head is granted complete authority in this regard, and such exemption from compulsory separation may be withdrawn at any time. The employee does not acquire the right to work an additional full 5 years simply because the agency head has granted him an exemption from mandatory separation at age 55.

An employee whose separation is to be effected under subsection (g) must be notified in writing at least 60 days in advance of the proposed separation. The separation is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

SECTION 5

Section 5 of the bill amends section 8336(c) of title 5 to provide that an employee who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer or a firefighter, or any combination of such service which totals at least 20 years, is entitled to an annuity.

The existing provisions of section 8336(c) require the head of the employing agency to recommend, and the Civil Service Commission to approve, the retirement of an otherwise eligible employee under that section. Also, the agency and the Commission are required to consider the degree of hazard to which the employee is subjected in the performance of his duties. The amended version of section 8336(c) retains the existing minimum age and service requirements for retirement but deletes the two requirements imposed upon agencies and the Commission as discussed above. Thus, an employee who fits the definition of the term "law enforcement officer" or "firefighter" under section 8331 (20) or (21), respectively, as added by section 2(b) of this bill, need only satisfy the minimum age and service requirements to be entitled to an annuity under the amended section 8336(c).

SECTION 6

Section 6 of the bill amends section 8339(d) of title 5, relating to the computation of civil service annuities. Section 8339(d), as amended, provides that the annuity of a law enforcement officer or firefighter who retires under section 8335(g) or section 8336(c) of title 5, as amended by the provisions of this bill, shall be computed at the rate of $2\frac{1}{2}$ percent of the employee's average pay multiplied by so much of his total service as does not exceed 20 years, plus 2 percent of his average pay multiplied by so much of his total service as exceeds 20 years. Under existing law, the annuity of such an employee is computed at the rate of 2 percent of average pay multiplied by the total years of service. The annuity of an employee retiring under section 8336(c) of title 5 is not reduced by reason of the fact that the employee may be under age 55 at the time of separation.

SECTION 7

Section 7, setting forth the effective date provisions of the bill, provides that the amendments made by the first section (authority to establish minimum and maximum age limits for appointments), section 2(b) (definitions of terms "law enforcement officer" and "fire-

fighter”), section 5 (eligibility requirements for immediate annuity), and section 6 (annuity computation rates) shall become effective on the date of enactment of the Act. The amendments made by section 2(a) (inclusion of premium pay for uncontrollable overtime as a part of basic pay) and section 3 (7½ percent retirement deduction rate) shall take effect at the beginning of the first applicable pay period which begins after December 31, 1973. The amendment made by section 4 of the bill (mandatory retirement at age 55) shall take effect on January 1, 1977.

ESTIMATED COST

The Civil Service Commission estimates that the enactment of H.R. 9281 will increase the overall normal cost of the retirement system by .10 percent of payroll, and will create an additional \$664 million unfunded liability in the system. Such increased deficit will require amortization in 30 annual appropriations of \$41.1 million.

ADMINISTRATIVE REPORT

The report of the U.S. Civil Service Commission, which is approved by the Office of Management and Budget, on H.R. 9281 is set forth below.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., September 11, 1973.

HON. THADDEUS J. DULSKI,
*Chairman, Committee of Post Office and Civil Service,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reply to your request for the Commission's views on H.R. 9281, a bill "To amend title 5, United States Code, with respect to the retirement of certain law enforcement and firefighter personnel, and for other purposes."

Essentially, H.R. 9281 would--

Permit the head of an agency (with the concurrence of an agent designated by the President) to determine and fix the minimum and maximum limits of age on original appointments to positions dealing with law enforcement and firefighting;

Include premium pay as part of basic pay in the computation of annuities for law enforcement officers;

Increase employee and agency contributions to the Civil Service Retirement and Disability Fund by ½% (from 7% to 7½%) for law enforcement officers and firefighters;

Separate effective January 1, 1977, an employee "eligible for immediate retirement" under 5 U.S.C. 8336(c) from service upon attaining age 55 unless his agency head exempts him; and

Increase the formula for personnel covered by 5 U.S.C. 8336(c) to: (1) 2½% of the "high-3" average salary multiplied by 20 years' service, and (2) 2% of the "high-3" average salary multiplied by all years of creditable Federal service over 20.

Our comments regarding these proposals follow.

Section 1 of the bill provides that the head of an agency may (with the concurrence of an agent designated by the President) determine and fix the minimum and maximum limits of age within which orig-

inal appointments may be made to positions covered by 5 U.S.C. 8336 (c).

Section 8336(c) applies to employees whose duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States or employees whose duties are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus. Such an employee who is separated from the service after reaching 50 years of age and completing 20 years of service in the performance of these duties is entitled to an annuity under the preferential provisions of this section provided his agency head recommends and the Civil Service Commission approves his retirement.

With two exceptions, the current law (5 U.S.C. 3307) prohibits the use of appropriated funds to pay the salary of any employee who establishes a maximum age requirement for entry into the competitive service. One exception permits the Secretary of Transportation (with the concurrence of the President's agent), to establish a maximum age limit for original appointment to air traffic controller positions. The other exception permits the Secretary of the Interior to set minimum and maximum age limits for original appointments to United States Park Police positions.

The Commission concurs in the proposal to authorize a maximum age limit for entering into the occupations covered by the bill. Under section 4 of this bill, employees in these occupations would generally be subject to mandatory retirement at age 55. It is important under these circumstances to have a limit on the age of entry that is related to that retirement age so persons entering the occupations can be provided a full career.

However, the Commission considers that this piecemeal approach to the matter of setting appropriate maximum entry age requirements is not the best one to take. We understand that it is patterned after the authorization granted the Secretary of Transportation in the case of air traffic controllers. But whereas the air traffic controllers involved in the earlier authorization are all in one agency, we are concerned here with occupations that are found in many agencies throughout Government. In our view, if maximum entry ages are to be established, it would be desirable to have uniform age limits for these positions, wherever they are located. Further, it is our view that the best way to achieve this uniformity would be to have the President, or such single agent as he may designate, establish the appropriate maximum age limit for entry into the covered occupations.

The Commission does not consider it appropriate to include minimum-age-setting authority as proposed in section 1 of the bill. For positions in the competitive service, the Commission already has authority to establish appropriate minimum age limits. Agencies themselves have the same authority with respect to positions in the excepted service. Since no new authorization is needed to achieve the purposes of section 1 in this respect, it is recommended that reference to minimum age limits be omitted.

Section 2 of H.R. 9281 provides that premium compensation payable under section 5445(c)(2) of title 5, United States Code, shall be treated as basic pay with respect to law enforcement officers for purposes of civil service retirement.

Although the premium payments for positions covered by the provisions of section 5445(c)(2) are established on the basis of annual rates, the amounts of such pay are adjusted periodically during the year on the basis of the frequency and duration of the irregular unscheduled overtime duty required in the position. For example, the Immigration and Naturalization Service adjusts the amount of the premium pay for individual positions (at 10%, 15%, 20% or 25% of basic pay) every six pay periods on the basis of the number of hours actually worked by the occupant during previous periods. The U.S. Marshals Service and the Bureau of Customs make similar adjustments on a quarterly basis.

The application of Section 5445(c)(2) is not limited to law enforcement officers. It would be inequitable to include in basic pay, for purposes of civil service retirement, premium pay under this section for law enforcement officers only. Further, agencies employing law enforcement officers do not pay all of such officers under this provision. Some Customs officers, for example, receive overtime pay on this basis and others do not. In our view, the circumstances in which the employee himself determines the need for overtime work, and those in which the need for overtime is determined by the supervisor, do not differ sufficiently—whether or not they are employed in law enforcement—to warrant different treatment for retirement purposes.

Section 2(b) of the bill (which defines law enforcement officers and firefighters) would remove the provision in the present law requiring the recommendation of the head of the employing agency and Commission approval before an employee could receive the more liberal retirement benefits provided by 5 U.S.C. 8336(c). The Commission believes that the provisions or both agency and Commission discretion should be retained in the law. Otherwise an employee fired for misconduct will be entitled to the preferential treatment of early retirement and a bonus annuity. This discretion assures that early retirements are for the good of the service.

Section 4 of the bill provides that a law enforcement officer or a firefighter "eligible for immediate retirement" under 5 U.S.C. 8336(c) shall be separated upon attaining age 55, unless his agency head exempts him. The agency head can make such an exemption up to age 60. The Commission believes early mandatory retirement is consistent with the overall intent of section 8336(c), and would have no objection to such a provision being enacted. In this respect, however, we believe the mandatory retirement provisions should be identical with the ages specified in P.L. 92-297 for Air Traffic Controllers—that is ages 56 and 61 respectively.

Section 6 of the bill would increase the annuity computation formula for law enforcement personnel covered by 5 U.S.C. 8336(c) to:

- (1) 2½% of the "high-3" average salary multiplied by 20 years' service in law enforcement work,
- (2) 2% of the "high-3" average salary multiplied by all years of creditable Federal service over 20.

Under present law their annuities are computed under a formula that is more liberal than the one used for employees generally: 2% of the "high-3" year average salary multiplied by all years of creditable Federal service. In comparison, the annuities of employees generally are computed under the basic annuity formula as follows:

- (a) 1½% of the "high-3" average pay multiplied by 5 years of service;
- (b) 1¾% of the "high-3" average pay multiplied by years of service between 5 and 10;
- (c) 2% of the "high-3" average pay multiplied by all years of service over 10 years.

The present preferential computation for law enforcers and firefighters was proposed and justified as a means for keeping the service young by encouraging the retirement of persons who, because the vigorous demands of their positions, are prematurely less able to perform required duties. The special annuity formula is intended to provide a man who elects to retire at age 50 with only 20 years of service an annuity which makes retirement economically feasible. However, many law-enforcement employees stay on to a later age, some even being automatically separated at age 70, and then secure agency recommendation to support application of the liberal formula. There is no basis for providing a preferential formula to a man who has served a full career of 30 to 35 years, and whose annuity under the regular formula would be fully adequate, but this situation can and does arise under the current law enforcer-firefighter formula.

The ineffectiveness of the present early law-enforcement retirement provision (in accomplishing its intended purpose of assuring a young, vigorous Federal law-enforcement organization) is readily apparent by comparing retirement statistics for law enforcers with those of employees generally. During the fiscal year 1972, employees retiring under the regular 30-year provision had an average age of 57.1, an average of 32.8 years of service, and were awarded annuities averaging \$642 a month. On the other hand, retiring law-enforcement personnel had an average age of 56.9, an average of 30.4 years of service, and were awarded annuities averaging \$826 a month. In other words, employees in law enforcement activities retiring under the special provisions for law enforcers received annuities averaging \$184 a month (28 percent) more than employees retiring under the generally applicable 30-year provision, but were on the average only 0.2 of a year younger, and had an average of 2.4 years less service.

The Commission believes the computation formula proposed by H.R. 9281 is excessively generous and should not be enacted. Use of the regular formula (1½%, 1¾%, 2%), with a guaranteed basic annuity of not less than 50% of high three average pay, as now applies to air traffic controllers, would be a more appropriate incentive for early retirement of law-enforcers and firefighters, would assure an economically feasible retirement income, and would discourage covered employees from delaying retirement long enough to raise the annuity above the 50% level.

If H.R. 9281 were enacted, we estimate that the normal cost of the Civil Service Retirement System for all employees would be increased

by .10 percent and the unfunded liability of the Civil Service Retirement and Disability Fund by \$664 million. Under the financing provisions of section 8348(f) of title 5, United States Code, this amount would be amortized in 30 equal annual installments of approximately \$4.1 million.

To help pay these additional costs, section 3 of the bill would increase the contribution rate of law enforcement officers and firefighters from the present 7% to a new 7½% with a corresponding increase in the agency contribution rate. The Commission objects to this provision, believing that preferential benefit provisions for any class of employees can be justified only when they serve a management purpose. We could agree to changes in the law which would increase costs—early retirement and a guaranteed annuity of 50% of average pay after 20 years of service—but these are not special rewards or liberalizations intended primarily to benefit the class of employees affected. They are part of a plan to benefit management by keeping law enforcement and fire fighting services young and vigorous. The higher annuity rate provided for early retirement is for the sole purpose of making it economically feasible for employees to retire in their early fifties.

We would object to any proposal to establish a preferential computation formula as a reward for a particular kind of service, because we believe no one type of service merits a greater retirement reward than any other. The value of service of any kind is reflected in pay, which in turn directly affects ultimate retirement income. A purely preferential formula cannot be rationalized by asking the employee to pay a higher contribution rate. Almost any identifiable class of Federal employees would gladly pay more for a clearly more liberal computation method. Thus, one of the purposes intended by H.R. 9281 is to achieve the management objective of a young and vigorous service, through a system of early retirements, and employees should not in our opinion be asked to help pay for a management tool.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of H.R. 9281 would not be in accord with the program of the President. However, the Administration agrees with the Committee's objective of encouraging a young and vigorous work force for these occupations. Accordingly, we could support a bill embodying only those features of H.R. 9281 which we have indicated above that we would support, and those we could support if modified as suggested.

By direction of the Commission:

Sincerely yours,

JAYNE B. SPAIN,
Acting Chairman.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart B—Employment and Retention

* * * * *

CHAPTER 33—EXAMINATION, SELECTION, AND
PLACEMENT

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND
APPOINTMENT

* * * * *

§ 3307. Competitive service; maximum-age entrance require-
ments; exceptions

(a) Except as provided in subsections [(b) and (c)] (b), (c), and
(d) of this section, appropriated funds may not be used to pay an em-
ployee who establishes a maximum-age requirement for entrance into
the competitive service.

* * * * *

(d) *The head of any agency may, with the concurrence of such
agent as the President may designate, determine and fix the minimum
and maximum limits of age within which an original appointment
may be made to a position as a law enforcement officer or firefighter,
as defined by sections 8331 (20) and (21), respectively, of this title.*

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Subpart G—Insurance and Annuities

* * * * *

CHAPTER 83—RETIREMENT

* * * * *

SUBCHAPTER III—CIVIL SERVICE RETIREMENT

§ 8331. Definitions

For the purpose of this subchapter—

(1) * * *

* * * * *

(3) “basic pay” includes—

(A) the amount a Member received from April 1, 1954,
to February 28, 1955, as expense allowance under section
601(b) of the Legislative Reorganization Act of 1946 (60
Stat. 850), as amended; and that amount from January 3,
1953, to March 31, 1954, if deposit is made therefor as pro-
vided by section 8334 of this title;

(B) additional pay provided by—

(i) subsection (a) of section 60e-7 of title 2 and the provisions of law referred to by that subsection; and

(ii) sections 60e-8, 60e-9, 60e-10, 60e-11, 60e-12, 60e-13, and 60e-14 of title 2; [and]

(C) premium pay under section 5545(c)(1) of this title; and

(D) with respect to a law enforcement officer, premium pay under section 5545(c)(2) of this title;

but does not include bonuses, allowances, overtime pay, military pay, pay given in addition to the base pay of the position as fixed by law or regulation except as provided by subparagraphs [(B) and (C)] (B), (C), and (D) of this paragraph, retroactive pay under section 5344 of this title in the case of a retired or deceased employee, uniform allowances under section 5901 of this title, or lump-sum leave payments under subchapter VI of chapter 55 of this title. For an employee paid on a fee basis, the maximum amount of basic pay which may be used is \$10,000;

* * * * *

(20) "law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this paragraph, "detention" includes the duties of—

(A) employees of the Bureau of Prisons and Federal Prison Industries, Incorporated;

(B) employees of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated;

(C) employees in the field service at Army or Navy disciplinary barracks or at confinement and rehabilitation facilities operated by any of the armed forces; and

(D) employees of the Department of Corrections of the District of Columbia, its industries and utilities; whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniformed Code of Military Justice (chapter 47 of title 10) require frequent (as determined by the appropriate administrative authority with the concurrence of the Commission) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation.

(21) "firefighter" means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

* * * * *

§ 8334. Deductions, contributions, and deposits

(a) (1) The employing agency shall deduct and withhold 7 percent of the basic pay of an employee, $7\frac{1}{2}$ percent of the basic pay of a Congressional employee, a law enforcement officer, and a firefighter, and 8 percent of the basic pay of a Member. An equal amount shall be contributed from the appropriation or fund used to pay the employee or, in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment. When an employee in the legislative branch is paid by the Clerk of the House of Representatives, the Clerk may pay from the contingent fund of the House the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee.

(c) Each employee or Member credited with civilian service after July 31, 1920, for which retirement deductions or deposits have not been made, may deposit with interest an amount equal to the following percentages of his basic pay received for that service:

Percentage of basic pay:	Service period
Employee:	
$2\frac{1}{2}$ -----	August 1, 1920, to June 30, 1926.
$3\frac{1}{2}$ -----	July 1, 1926, to June 30, 1942.
5-----	July 1, 1942, to June 30, 1948.
6-----	July 1, 1948, to October 31, 1956.
$6\frac{1}{2}$ -----	November 1, 1956, to December 31, 1969.
7-----	After December 31, 1969.
Member or employee for Congressional employee service:	
$2\frac{1}{2}$ -----	August 1, 1920, to June 30, 1926.
$3\frac{1}{2}$ -----	July 1, 1926, to June 30, 1942.
5-----	July 1, 1942, to June 30, 1948.
6-----	July 1, 1948, to October 31, 1956.
$6\frac{1}{2}$ -----	November 1, 1956, to December 31, 1969.
$7\frac{1}{2}$ -----	After December 31, 1969.
Member for Member service:	
$2\frac{1}{2}$ -----	August 1, 1920, to June 30, 1926.
$3\frac{1}{2}$ -----	July 1, 1926, to June 30, 1942.
5-----	July 1, 1942, to August 1, 1946.
6-----	August 2, 1946, to October 31, 1956.
$7\frac{1}{2}$ -----	November 1, 1956, to December 31, 1969.
8-----	After December 31, 1969.
Law enforcement officer for law enforcement service and firefighter for firefighter service:	
$2\frac{1}{2}$ -----	August 1, 1920, to June 30, 1926.
$3\frac{1}{2}$ -----	July 1, 1926, to June 30, 1942.
5-----	July 1, 1942, to June 30, 1948.
6-----	July 1, 1948, to October 31, 1956.
$6\frac{1}{2}$ -----	November 1, 1956, to December 31, 1969.
7-----	January 1, 1970, to December 31, 1973.
$7\frac{1}{2}$ -----	After December 31, 1973.

§ 8335. Mandatory separation

(a) * * *

(g) A law enforcement officer or a firefighter who is otherwise eligible for immediate retirement under section 8336(c) of this title shall be separated from the service on the last day of the month in which he becomes fifty-five years of age or completes twenty years of service if then over that age. The head of the agency, when in his judgment the public interest so requires, may exempt such an employee from automatic separation under this subsection until that employee becomes sixty years of age. The employing office shall notify the employee in writing of the date of separation at least sixty days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the sixty-day notice expires.

§ 8336. Immediate retirement

(a) An employee who is separated from the service after becoming 55 years of age and completing 30 years of service is entitled to an annuity.

(b) An employee who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.

[(c) An employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States or are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of fire-fighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position, who is separated from the service after becoming 50 years of age and completing 20 years of service in the performance of these duties is entitled to an annuity if the head of his agency recommends his retirement and the Civil Service Commission approves that recommendation. The head of the agency and the Commission shall consider fully the degree of hazard to which the employee is subjected in the performance of his duties, instead of the general duties of the class of the position held by the employee. For the purpose of this subsection, "detention" includes the duties of—

[(1) employees of the Bureau of Prisons and Federal Prison Industries, Incorporated;

[(2) employees of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated;

[(3) employees in the field service at Army or Navy disciplinary barracks or at confinement and rehabilitation facilities operated by any of the armed forces; and

[(4) employees of the Department of Corrections of the District of Columbia, its industries and utilities;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniform Code of Military Justice (chapter 47 of title 10)

require frequent (as determined by the appropriate administrative authority with the concurrence of the Commission) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation or rehabilitation.】

(c) *An employee who is separated from the service after becoming fifty years of age and completing twenty years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least twenty years, is entitled to an annuity.*

* * * * *

§ 8339. Computation of annuity

(a) * * *

* * * * *

(d) *The annuity of an employee retiring under section 8335 (g) or this title is 2 percent of his average pay multiplied by his total service.】*

(d) *The annuity of an employee retiring under section 8335 (g) or 8336 (c) of this title is—*

(A) *2½ per centum of his average pay multiplied by so much of his total service as does not exceed twenty years; plus*

(B) *2 per centum of his average pay multiplied by so much of his total service as exceeds twenty years.*

* * * * *

MINORITY VIEWS ON H.R. 9281

H.R. 9281 is extremely bad legislation, and it should be rejected by the House.

The bill bears no resemblance to the one on which hearings were held. It was presented to the subcommittee as an omnibus-type package containing numerous provisions of questionable merit. The bill as a whole was never the subject of discussions nor were comments solicited pro or con.

Specifically, we are in total disagreement with the results which the bill is intended to accomplish and the policy underlying it, which is, according to the majority report—"To provide improved retirement benefits for Federal law enforcement and firefighting personnel".

The bill, in conflict with the basic policy of the Civil Service retirement law, seeks to provide special retirement benefits for a small, select group of Federal employees at enormous expense and to the detriment of all other Federal employees.

Its purpose subverts the principal concepts of the Civil Service Retirement System which bases the amount of benefits received on two factors only—length of service and the average high 3-year salary. Retirement benefits under the Civil Service Retirement System were never intended to be a reward for the type of service performed. Benefits are computed solely upon the basis of an employee's length of service and the salary earned. H.R. 9281 would change that historic precept by singling out approximately 56,000 law enforcement and firefighting personnel and granting to them a retirement reward solely because of the type of service they perform. No other employees in the executive branch would be so favored.

No one type of Federal service should merit a greater retirement reward than any other type of service. The value of service performed by an employee is, and rightly should be, reflected in his pay. In turn, the pay he receives directly affects his ultimate retirement income. The purpose of H.R. 9281 is not only a threat to the retirement system itself, but it is eminently unfair to more than 2 million other Federal employees who could claim similar improved benefits by reason of the service they perform. Why, for example, should service as a firefighter earn a larger retirement benefit than service as a letter carrier, postal clerk, attorney, astronaut, engineer, welder, or doctor?

And what about the cost of providing these preferential retirement benefits to this select group of 56,000 employees? The costs involved are an outrageous insult to all other Federal employees and to the taxpayers of the country.

The Civil Service Commission estimates that the normal cost—that is the percentage of the total Federal payroll required to pay for retirement benefits—would increase by one-tenth of 1 percent (a cost which all employees would soon have to share), and the unfunded liability of the retirement fund will be increased by \$664 million. This

incremental increase in the unfunded liability will have to be paid, under existing provisions of the law, in 30 annual equal installments of approximately \$41.1 million for a total 30-year cost of \$1,233 million. It would be an unconscionable act for the Congress during this economic crisis to commit the Federal treasury to a cost of this magnitude, and particularly, for a purpose that is patently wrong.

As indicated, the bill contains certain provisions which have not been carefully considered by the committee, and we seriously question their implementation into law.

For example, the bill permits the establishment of minimum age limits for the positions involved. The Civil Service Commission already has such authority for positions in the competitive service, and the agencies have the same authority with respect to positions in the excepted service. This provision is not needed, and one wonders why it is in the bill.

Additionally, the bill permits the heads of the agencies which employ firefighters or law enforcement personnel to set maximum age limits for entry into the covered occupations. Since these positions exist in a number of different agencies, it is possible, and probable, that there will be different age maximums for the same occupations in different agencies. The least that should be done is to attempt to achieve some uniformity by having a single agent set the age limits for all occupations regardless of where employed.

Also the bill provides that premium pay received by law enforcement officers will be included as base pay for purposes of Civil Service retirement. The question arises as to why the same treatment of premium pay is not provided for purposes of Federal employees' group life insurance, workman's compensation, and severance pay. The question also arises as to why only law enforcement personnel would receive the benefit of being able to credit premium pay for retirement purposes when other occupations which are entitled to receive premium pay would not be covered by this bill.

The bill also removes the provision in exiting law which requires the recommendation of the head of the agency and the Commission's approval before an employee would receive the more liberal retirement benefits now provided by law. Again, a question arises as to why this provision was eliminated from existing law. Its elimination will permit an employee who is fired for misconduct to receive the preferential treatment of early retirement and a bonus annuity. Is this intended by the authors of the bill?

In summary, we are completely opposed to the purpose of this bill which singles out one small group of Federal employees to the exclusion of all others for preferential retirement benefits. It is inflationary. It is ill conceived. It should be defeated.

H. R. GROSS.
EDWARD J. DERWINSKI.
WALTER E. POWELL.
RICHARD W. MALLARY.
ANDREW J. HINSHAW.

